

The sole issue on appeal is whether the cerebral vascular accident and subsequent death of John V. Lynch, Jr., arose out of and in the course of his employment with the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds, for the reasons stated below, that Mr. Lynch's cerebral vascular accident and resulting death did not arise out of and in the course of his employment with respondent.

The evidence establishes that while at work on April 13, 1992, Mr. Lynch fell and struck his head on the concrete floor, fracturing his skull. He was immediately hospitalized and four days later died of a stroke. Mr. Lynch did not regain consciousness sufficiently to tell how or why he fell. The medical records include a suggestion that he lifted a pallet, stood up and then fell. However, upon examination of the treating physician, it appeared no one knew the source of that version of the facts and there were, in fact, no witnesses to the incident.

The medical testimony posits two different explanations for the series of events which led to Mr. Lynch's death. Dr. Bernard Abrams testified that in his opinion Mr. Lynch fell for unknown reasons and fractured his skull. He attributed the subsequent stroke and death to the fall and fracture. Dr. C.M. Striebinger, on the other hand, testified that, in his opinion, Mr. Lynch fell because of a ruptured aneurysm. The ruptured aneurysm also produced damage which culminated in the stroke and death. Dr. Striebinger concluded that neither the fall nor the fracture caused or contributed to Mr. Lynch's stroke and death.

Respondent argues that neither sequence makes the injury and death compensable. Respondent contends that under the sequence suggested by Dr. Abrams, Mr. Lynch's injuries resulted from an idiopathic fall and Mr. Lynch was not in any position of increased risk due to his employment. See, *Bennett v. Wichita Fence Co.*, 16 Kan. App. 2d 458, 824 P.2d 1001 rev. denied 250 Kan. 804 (1992). The sequence suggested by Dr. Striebinger, on the other hand, would be governed by K.S.A. 44-501(e). Since there is no showing of that the ruptured aneurysm and cerebral vascular injury resulted from exertion more than his usual work, benefits should be denied.

The Appeals Board finds it unnecessary to consider respondent's argument that the injuries resulted from a non-compensable idiopathic fall. The Appeals Board finds that the sequence of events suggested by Dr. Striebinger is the more probable of the two. Dr. Striebinger was the treating physician. He testifies from his examination and observations of Mr. Lynch while in the hospital. Dr. Abrams, on the other hand, testified on the basis of his review of the records and the CT films. Dr. Striebinger testified from his observations that the skull fracture was a linear fracture which did not cause any particular neurological problems. According to Dr. Striebinger Mr. Lynch had very little subdural hematoma directly related to the fracture and underlying bruise. In his opinion the subarachnoid hemorrhage did not result from trauma. Based upon the specific opinions of Dr. Striebinger, the Appeals Board finds that Mr. Lynch's cerebral vascular accident and resulting death did not arise out of and in the course of his employment.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Alvin E. Witwer, dated May 19, 1994, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February, 1995 .

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Edward W. Kriss, Lenexa, KS
 Frederick J. Greenbaum, Kansas City, KS
 David J. Adkins, Prairie Village, KS
 Alvin E. Witwer, Administrative Law Judge
 George Gomez, Director